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FONG HOLDINGS PTE. LTD.

v.

COMPUTER LIBRARY (S) PTE. LTD.

HIGH COURT, SINGAPORE

CHAN SEK KEONG J

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[SUIT NO. 3636 OF 1984]

9 MAY 1991

LANDLORD AND TENANT: *Tenancy - Termination - Dispute - Return of keys - Documentary evidence - Whether surrender effective in law - Statute of Frauds 1677 [UK], s. 3 - Promissory estoppel - Benefits to landlord - Consideration*

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The plaintiffs were landlords of the premises which were let to the defendants for a fixed term of 24 months commencing 15 May 1982 at the rent of \$4,600 payable per month in advance. On 28 December 1983, the defendants wrote to the plaintiff that, pursuant to the submissions between Mrs. C, Mr. S (on behalf of the plaintiffs) and SL (on behalf of the defendants) they would be vacating the premises effective 15 January 1984. On 15 January 1984, the defendants sent a letter to the plaintiff forwarding a cheque for \$13,800 being outstanding rental of 4 months less the security deposit and (allegedly) 3 sets of keys belonging to the premises.

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The defendants also made provision for the plaintiff's signature on the duplicate of the letter.

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It was contended by Mrs. C, the plaintiff's governing director, that she agreed to the defendants giving up the premises only if a substitute tenant could be found, that she did not confirm the letter dated 28 December 1983 as requested by the defendants as it did not reflect their agreement on the matter.

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She further alleged that the keys were not enclosed in the letter but were handed to her employee without her knowledge. Mrs. C also said she had been advised by her lawyers to accept the cheque in the letter dated 15 January 1984, that she had instructed them to demand payment of future rent and that after 15 January 1984 she did not carry out any renovations to the premises and left it in the state and condition as surrendered by the defendants.

The dispute between parties was whether there was an agreement as set out in the defendants letters of 28 December 1983 or 15 January 1984.

The judgment also deals with several questions of law, viz:

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- (1) whether the surrender was effective under the law, that is, if it complied with the requirements of s. 3 of Statute of Fraud 1677.
- (2) whether there was any consideration for the plaintiff's agreement to accept the surrender and whether for that reason, the *High Trees* principle applied.

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Held:

[1] Having regard to the demeanour of Mrs. C and SL, but more particularly the documentary evidence, SL's testimony is to be believed as there were many factors which pointed to the existence of an agreement for early termination. There was an oral agreement between the parties for the early termination of the tenancy agreement and that the keys were enclosed and received by the plaintiff with the letter and the cheque.

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[2] The defendants' letter of 15 January 1984 was clearly a sufficient note to the effect the surrender of the premises under s. 3 of the Statute of Frauds. It was in writing, signed by the party surrendering the premises and it enclosed the keys to the premises. In this case, as the letter was written and the acts evidenced thereby were done by the defendants in performance of a prior oral agreement to surrender (which the Court recognised), it was effective to operate as an express surrender under s. 3, as no further consent of the landlord was required.

[3] Where there is an agreement between the landlord and the tenant that the latter shall deliver up possession, and possession is delivered up accordingly, there is surrender by operation of law. Therefore even if the letter of 15 January 1984 did not comply with s. 3 of the Statute of Frauds, it was still a surrender by operation of law, as the acceptance or retention of the keys by the plaintiff was an unequivocal act, once the oral agreement to surrender had been proved.

[4] Consideration is not necessary for the application of the promissory estoppel rule in the *High Trees* case. If the express surrender was not valid by reason of the Statute of Frauds, or there was no surrender by operation of law, there is no reason why promissory estoppel should not be applied to the present case to estop the plaintiffs from claiming that she is entitled to future rents.

[5] There was consideration for the promise of the plaintiff to agree to the surrender, as the plaintiff derived benefits from the receipt of arrears of rent and from being relieved from paying arrears of maintenance charges. In addition, the plaintiffs derived the benefit of being able to let the premises out again.

The benefits derived were considerations, because where a promisor makes a promise as a result of which he obtains a benefit or obviates a disbenefit, that was sufficient consideration for his promise, even though the promise did not suffer any detriment.

[Plaintiff's claim dismissed with costs.]

Cases referred to:

Central London Property Ltd. v. High Tree House Ltd. [1947] 1 KB 130 (*cons*)
Fenner v. Blake [1900] 1 QB 426 (*cit*)
Foster v. Robinson [1951] 1 QB 149 (*fol*)
Highway Properties Ltd. v. Kelly Douglas [1971] 17 DLR (3d) 710 (*cit*)
Oastler v. Henderson [1877] 2 QBD 575 (*cit*)
Phene v. Popplewell [1862] CP 12 CBNS 334 (*cit*)
Smith v. Roberts [1892] 9 TLR 77 (*cit*)

Legislation referred to:

Law of Property Act 1925 [UK], s. 52(1)
 Statute of Frauds 1677 [UK], ss. 3, 4

Other sources referred to:

Foa's Law of Landlord and Tenant (7th Edn.) pp. 617, 618
Gray: Elements of Land Law 1987 p. 487
Megarry & Wade: The Law of Real Property, 2nd Edn. p. 673
For the plaintiffs - Salem Ibrahim (Sylvia Lim with him)
For the defendants - S. Hameed

*a***JUDGMENT****Chan Sek Keong J:**

This is a claim by the plaintiffs as landlords against the defendants for loss of rent in respect of two shop units (the premises) on the ground floor of Parklane Shopping Mall at the rate of \$4,600 per month for 10 months less a deposit security of \$4,600.

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The claim is made pursuant to a tenancy agreement dated 15 April 1982 whereby the plaintiffs let to the defendants the premises for a fixed term of 24 months commencing on 15 April 1982 at the rent of \$4,600 payable per month in advance. The defendants also deposited with the plaintiffs the sum of \$4,600 "to hold as security for any claim which the landlord may have against the tenant under the terms of this agreement on the signing of this agreement and if the tenant shall fail to perform and observe any of the covenants conditions stipulations and agreements then the said deposit shall be forfeited by the Landlord absolutely..."

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On 15 January 1984, the defendants sent to the plaintiffs a letter in the following terms:

Further to our letter of 28 December 1983, pertaining to the verbal telephonic agreement between your Mrs. Solomon, Mrs. Chua and the undersigned, we are forwarding the following:

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(1) A cheque in the amount of \$13,800 computed as follows:

(a) outstanding rental for 4 months @ \$4,600 per month

(b) less deposit of \$4,600 paid initially when agreement was entered into

(2) A set of 3 keys (returned for your possession)

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With the above in view, we trust everything is properly settled and appreciate your acknowledgment of receipt of this letter by signing on the duplicate and returning to us as soon as possible.

Thank you.

[The letter dated 28 December 1983 read:]

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Subsequent to the discussion between your Mrs. Chua, Mrs. Solomon and the undersigned, we wish to confirm that we will vacate the abovesaid 2 units effective 15 January 1984. Such decision was made consequent to the expressed permission and agreement of yourself as landlords, notwithstanding the fact the formal agreement signed should lapse by 14 October 1984.

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In view of the abovesaid, we are forwarding a cheque of \$13,800, being the outstanding rental for the months of:

15 September to 15 October

15 October to 15 November

15 November to 15 December

15 December to 15 January 1984

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after deduction of the deposit of \$4,600 paid initially when the agreement was entered into.

With regard to the monthly service charge, a separate cheque will be drawn to cover the expenses up to 15 January 1984. This will be made direct to the Management Corporation Strata Title No 561.

As a verification of the correctness of the contents, please sign on the duplicate copy for our file.

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Thanking you

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Yours faithfully

Computer Library (S) Pte Ltd.

Steven Lek

Managing Director

We, Fong Holdings Pte Ltd. verify correctness of the contents stated above.

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Mrs. Chua was the governing director of the plaintiffs and Mrs. Solomon was the private secretary of Mrs. Chua. She assisted Mrs. Chua in typing letters and answering telephone calls for Mrs. Chua. Steven Lek was the managing director of the defendants.

The dispute between the parties was whether there was an agreement as set out in the defendants' letter of 15 January 1984 or of 28 December 1983.

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Mrs. Chua's testified as follows: the plaintiffs, of which she was the governing director, owned several shop units in the building and that her office was also in the same building; that in December 1983, she had spoken with Steven Lek by telephone when he sought her consent to surrender the defendants' tenancy as his business was not doing well on account of the poor location of the premises; that she agreed to the request but only if a substitute tenant could be found on the same terms; that both of them should try to get a new tenant; that accordingly, she caused 2 advertisements to be published in the Straits Times on 29 December 1983 and 7 January 1984, at her own expense; that although she had spoken with Steven Lek several times, she did not meet him at his shop in November 1983, although she was often in the shopping mall; that she did not confirm the letter of 28 December 1983 because it did not reflect their agreement on the matter; that the keys to the premises were not enclosed in the letter of 15 January 1984 but were returned separately in the evening and handed to an office boy without her knowledge and consent; that she consulted her solicitors on the letter of 15 January 1984 and was advised that she was entitled to accept the cheque for RM13,800 as the defendants were in arrears of rent; that she instructed her solicitors to send a letter dated 30 January 1984 to the defendants to demand payment of future rent; that after that date she did not do any renovation to the premises and left it in the state and condition as surrendered by the defendants.

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The above account, in sum, was the story of Mrs. Chua. The other part of her account will be considered in relation to Steven Lek's account of the events. Mrs. Solomon also testified but much of her evidence was hearsay. That which she had personal knowledge had little bearing on the facts in dispute.

Steven Lek's testimony was as follows: that, because of poor business due to the location of the premises, which was situated at an isolated part of the shopping mall, the defendants were always late in paying their rent; that sometime in November 1983 when Mrs. Chua came to the premises to ask for rent, he explained to her why he could not pay the rent and why his business was bad; that he told her that it would be good for him and for her if he were allowed to terminate the tenancy early; that if she agreed to the proposal, he would pay up all arrears of rent and maintenance charges; that Mrs. Chua did not agree there and then but would think about it; that during that month, he spoke to her seven times on the telephone and she finally agreed to allow him to move out on 15 January 1984; that after obtaining Mrs. Chua's agreement, he wrote a letter dated 25 November 1983 to the plaintiffs setting out the terms of the agreements, viz., that the defendants would vacate the premises on 15 January 1984 on 3 conditions: (a) all rent arrears up to 15 January 1984 be paid up; (b) all service charge arrears be paid up; and (c) the premises be returned in good condition.

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a Steven Lek said the letter of 25 November 1983 was sent to the registered office of the plaintiffs. This evidence was corroborated by his sales assistant (DW2) who had typed the letter. This letter did not reach Mrs. Chua, and when told later about it. Steven Lek sent her a copy thereof on 28 December 1983 under a covering letter. This was received.

b Steven Lek continued his testimony as follows: that he was doing his accounts in December when he realised that he had not received written confirmation of the agreement from Mrs. Chua, so he telephoned her in Hong Kong (where she was normally on vacation with her husband at that time of the year) and was told by her that he could trust her word; that to make sure that there was no trouble later, he sent her another letter dated 28 December 1983 to confirm the terms of the agreement; that he suggested 15 January 1984 as the date for the surrender as he needed the premises to store his stock whilst waiting for other premises in the same building to be furnished and made ready for business; that he had not agreed to look for a substitute tenant for the premises as that was not part of the agreement; that he vacated the premises and despatched the cheque and keys in the letter of 15 January 1984 which reached the plaintiffs only on 18 January 1981 because the letter had to be sent by LUM after an unsuccessful despatch to the registered office of the plaintiffs.

d With respect to the other premises, Steven Lek's testimony was that at around the time he was trying to terminate the tenancy he found another shop unit in the same building which was next to the entrance of the building and adjacent to Selegie Road. He thought that was a better location to do business. (I should add that it did not turn out that way at all based on the audited accounts of the company for that financial year). Accordingly, he secured a tenancy of this unit in the name of another company called Computer Supermarket (S) Pte Ltd. for 10 months commencing on 1 January 1984 at the rent of \$5,000 plus half the maintenance charges. On or about 29 January 1984, Mrs. Chua saw Steven Lek in his new premises. According to Steven Lek, she became very angry when she found out that he had rented another unit in the same building and said that if she had known of his intention she would never have agreed to allow him to terminate his tenancy early. Naturally, she denied these alleged remarks, although she admitted seeing Steven Lek carrying on business there. Except for this incident and her later conduct in commencing proceedings he had earlier found Mrs. Chua a nice and considerate person.

f The sales assistant of the defendants also testified. Her evidence was rather confused, and accordingly, I place no weight on it.

g The crux of the matter is whether I should believe the account of Mrs. Chua or that of Steven Lek. Having regard to their demeanour but more particularly the documentary evidence, I have little hesitation in believing Steven Lek. Her denial that she did not meet Steven Lek at his shop, in November 1983 was highly improbable, given the fact that her office was in the same building, her admission that she was often in the shopping mall and the invariable lateness in the payment of rent by the defendants.

h There were many other factors which pointed to the existence of an agreement for early termination. For example, her failure to deny either orally or in writing the letters of 25 November 1983 and 28 December 1983. More surprising was the omission of her solicitors to reply to the letter of 15 January 1984 until 30 January 1984, if she indeed had instructed her solicitors, as alleged, before she saw Steven Lek on or about 29 January 1984 the timing was just too much of a coincidence. The solicitors' letter dated 30 January 1984 had stated that they were instructed by the plaintiffs that the defendants had vacated the premises "sometime this month without our clients' knowledge or consent", Consent was in dispute.

i Knowledge certainly was not, having regard to the defendants' prior letters. The said letter

made no mention whatever of the defendants' letters which set out their understanding of the agreement to surrender the tenancy. It also did not refer to the delivery of the keys to the plaintiffs, or their alleged refusal to accept them. This, I find, to be exceedingly uncharacteristic of a lawyer's letter of demand. It is as if the prior events leading to the vacation of the premises on 15 January 1984 had never happened, or that the plaintiffs had not informed the solicitors about them. The only probable explanation for this, and I so find, was that the said letter was written as a result of the dismay and anger of Mrs. Chua in thinking that Steven Lek might have taken advantage of her. If there had been no agreement in the mind of Mrs. Chua, a reply from her or her solicitors would have been sent shortly after the letter of 15 January 1984. This letter and the conduct of Mrs. Chua were, in my view, entirely consistent with the existence of an agreement to surrender rather than the opposite.

Accordingly, I find that there was an oral agreement between the plaintiffs and the defendants for the early termination on 15 January 1984 of the tenancy agreement. I also find that the keys to the premises were enclosed in the letter of 15 January 1984 and were received by the plaintiffs with the letter and the cheque.

On these findings, the first issue of law before me is whether the surrender was effective under the law. Counsel for the plaintiffs submitted that as the agreement was oral, it was ineffective for non compliance with s. 4 of the Statute of Frauds 1677. Section 4 has nothing to do with surrenders of leases or tenancies. What Counsel had in mind was s. 3 which I shall consider later.

Counsel for the plaintiffs also cited a number of cases where it was decided that the return of the keys by the tenant coupled with their retention by the landlord was not sufficient to effect a surrender, unless there was some unequivocal act of re-taking possession of the premises by the landlord. Counsel for plaintiffs cited *Smith v. Roberts* [1892] 9 TLR 77, *Oastler v. Henderson* [1877] 2 QBD 575, *Phene v. Popplewell* [1862] CP 12 CBNS 334-337, *Highway Properties Ltd. v. Kelly Douglas* [1971] 17 DLR (3d) 710, *Fenner v. Blake* [1900] 1 QB 426. In the present case, Mrs. Chua testified that she had left the premises alone after the defendants had vacated it. Hence, Counsel argued that there was no unequivocal act of re-taking possession. It was also argued that advertising the premises for a tenant was in itself equivocal.

The said authorities were concerned with surrenders by operation of law and not express surrenders. What amounts to a surrender by operation of law is stated by Evershed MR in *Foster v. Robinson* [1951] 1 QB 149, at p. 155:

That there may be a surrender apart from any writing it is clear, and that condition is expressly preserved by s. 52 of the Law of Property Act 1925. What, then, amounts to a surrender by operation of law? We have been referred to many cases, including *Lyon v. Reed*, and to the well-known judgment of Parke B in that case. I think that for present purposes it is sufficient to refer to *Foa's Law of Landlord and Tenant* (7th Edn.), pp. 617 and 618:

It has been laid down that in order to constitute a surrender by operation of law there must be, first, an act of purported surrender invalid *per se* by reason of non-compliance with statutory or other formalities, and secondly, some change of circumstances supervening on, or arising from, the purported surrender which by reason of the doctrine of estoppel or part performance, makes it inequitable and fraudulent for any of the parties to rely upon the invalidity of the purported surrender.

- a* The fact that the doctrine of estoppel really forms the foundation in such a case as this of the alleged surrender by operation of law is, I think, clear from the judgment of Chitty J in *Wallis v. Hands*.
- In the present case, there was a **prior** agreement, albeit oral, for the surrender of the tenancy. Accordingly, the first issue the Court must determine is whether the agreement complies with the requirements of the s. 3 of the Statute of Frauds which provided as follows:
- b* That no leases ... of ... lands ... shall ... be assigned, granted or surrendered, unless it be by deed or **note in writing**, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law.
- In England, this section has been replaced by s. 52(1) of the Law of Property Act 1925 which provides that, subject to certain exceptions, a surrender must be by deed only, although equity may give effect to an express surrender made by mere writing: see Gray: *Elements of Land Law* 1987 at p. 487; Megarry & Wade: *The Law of Real Property*, 2nd Edn. at p. 673.
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- d* The defendants' letter of 15 January 1984 was clearly a sufficient note to effect the surrender of the premises in terms of s. 3 of the Statute of Frauds. It was in writing signed by the party surrendering the premises, and it enclosed the keys to the premises. Of course, if the said letter had been sent and the keys returned without the consent of the plaintiffs, such an unilateral act could not have affected the rights of the plaintiffs. But, where, as here, the letter was written and the acts evidenced thereby were done by the defendants in performance of a prior oral agreement to surrender, it was surely effective to operate as an express surrender under s. 3, as no further consent of the landlord was required. It is not necessary to consider whether, if the tenancy or its residual term had been for longer than 3 years, s. 53 of the Conveyancing and Law of Property Act would have required a surrender by deed.
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- Even if the letter of 15 January 1984 and its contents did not comply with s. 3 of the Statute of Frauds, I am of the view that there was a surrender by operation of law. The reason is that the acceptance or retention of the keys of the premises by the plaintiffs, although in itself equivocal, was no longer so once the oral agreement to surrender has been proved. The retention or acceptance of the keys could be explained in terms of the oral agreement.
- f* In *Grimman v. Legge* [1828] 8 B & C 324, it was decided that where there is an agreement between the landlord and the tenant that the latter shall deliver up possession, and possession is delivered up accordingly, there is a surrender by operation of law. In this connection, the headnote in *Phene v. Popplewell* is incorrect in so far as it implied that there was an express agreement between the landlord and the tenant to put an end to the term in that case. There was no such agreement. The tenant had gone bankrupt, quitted the premises and tendered the keys to the landlord who declined to receive them.
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- There was also an argument before me on whether there was any consideration for the plaintiffs' agreement to accept the surrender and whether, for that reason, the *High Trees*' principle applied. Counsel for the plaintiffs submitted that there was no consideration in that the defendants did what they were only under an obligation to do, viz., to pay the arrears of rent and maintenance charges, and that there was no estoppel of any kind against the plaintiffs. This argument cannot be accepted for the following reasons: firstly, consideration is not necessary for the application of the *High Trees*' principle. In the case itself, viz., *Central London Property Ltd. v. High Tree House Ltd.* [1947] 1 KB 130, the tenants had given no consideration for the agreement of the landlords to reduce the rent for the period of the war. If the express surrender was not valid by reason of the Statute of Frauds, or there was no
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surrender by operation of law, there is no reason why promissory estoppel should not be applied to the present case to estop the plaintiffs from claiming that she is entitled to future rents.

Secondly, I think that there was consideration for the promise of the plaintiffs to agree to the surrender. Although the defendants were under a legal liability to pay the arrears of rent to the plaintiffs and maintenance charges directly to the management corporation, nevertheless the plaintiffs did derive a benefit from the receipt of the arrears of rent and from being relieved of having to pay the arrears of maintenance charges, as otherwise they might not have been paid at all. It should be recalled that the defendants' business was poor and losing money. There was no certainty that the defendants would have been able to pay the arrears of rent or future rent if they had stayed on. Moreover, the plaintiffs also derived a benefit in being able to let the premises out again. They did place advertisements before and after the surrender of the tenancy on terms and conditions which were only slightly less favourable than those applicable to the defendants. The premises were not let out until after the expiry date of the tenancy, but there was no evidence that they could not have let out the premises at any rent. In *Williams v. Roffey Bros. & Nicholls (Contractors) Ltd.* [1990] 1 All ER 512, the Court of Appeal held that where a promisor makes a promise as a result of which he obtains a benefit or obviates a disbenefit, that was sufficient consideration for his promise, even though the promisee did not suffer any detriment. In that case, the promisee did not suffer any detriment because he had done what he was under a legal obligations to the promisor to do in return for the promise of the promisor.

For the above reasons, the plaintiffs' claim is dismissed with costs.

Also found at [1991] 3 CLJ 1919

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